IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

(1) S. B. CIVIL MISCELLANEOUS APPEAL NO.396/95
(Jetha Ram v. Divisional Manager & Ors.)

(2) S. B. CIVIL MISCELLANEOUS APPEAL NO.397/95
(Deepa Ram v. Divisional Manager & Ors.))

Under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and award dated November 08, 1994, passed by Shri Gulam Hussain, RHJS, Judge, Motor Accident Claims Tribunal, Jalore, in MACT Case Nos. 51/92 & 57/92

DATE OF JUDGMENT :::: 08-10-2007

P R E S E N T

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr.Rajesh Panwar) for Appellant (s).
Mr.S.S.Sankhla)
Mr.B.K.Bhatnagar, for Respondent (s).

BY THE COURT:

Aggrieved by the judgment dated 8th November, 1992, passed by the Judge, Motor Accident Claims Tribunal, Jalore, in

Case Nos. 51/92 and 57/92, these two appeals have been preferred by the claimants – appellants. Claimant – appellant Jetha Ram maintained Claim Petition No.51/92, whereas claimant – appellant Deepa Ram maintained Claim Petition No.57/92. Since both the claim petitions were decided by a common judgment, thus two appeals were heard and decided by the common judgment. It is stated in both the cases that on 25.11.1991, claimants – appellants were going towards Sanchore from Makhpura Check Post in Jeep No. RRT 4879. The jeep was driven by appellant – Deepa Ram, while owner of the jeep Jetharam was also sitting in the Jeep. A bus belonging to Gurajarat State Road Transport Corporation, bearing No. GJZ 1305 dashed with the jeep, due to rash and negligent driving of the bus driver. It was alleged that the bus suddenly came to the wrong side of the road and collided with the jeep, despite of jeep which was moving to its own side. The claimant – Jehtaram claimed a sum of Rs.31,089/- towards compensation, whereas Deepa Ram claimed compensation of a sum of Rs.3,27,000/-.

In reply to the claim petition, non-appellants Corporation submitted that accident took place due to rash and negligent driving of the jeep driver as the bus was moving to its own side. Thus, the Corporation denied the factum of rash and negligent driving by the bus driver and, therefore, they denied claim of the

claimants.

In Claim Case No.59/92, five witnesses were produced to prove claim and twenty documents were produced, whereas in Claim Case No.57/92, five witnesses were produced, out of which, four witnesses were common and one witness Dr.Rajesh Nahta was produced in place of witness Manchalal who was produced in case No.51/92.

The learned Tribunal thereafter framed issues and recorded evidence of both the sides. While recording the finding of issue No.1, it was held that it is a case of contributory negligence of both the parties. While deciding the claim in separate claim petition, the learned Tribunal held that Deepa Ram, Driver, is entitled for compensation for a sum of Rs.44,000/-, out of which a sum of Rs.28,577/- were found admissible towards medical bills, Doctor's fees and other expenses. Rs.5,000/- were given due to mental and physical agony and Rs.10,000/- were given as compensation due to the injuries sustained by the claimant. The total amount of Rs.44,577/- was arrived at, however, the same was made in round figure and thereby a sum of Rs.44,000/- was allowed in favour of the claimant – Deepa Ram in Claim Case No.51/92. So far as claim of Jetha Ram in claim case No.57/92 is concerned, a

sum of Rs.8,500/- were allowed, out of which a sum of Rs.7,825/- was allowed towards expenses of jeep repairing etc. and a sum of Rs.675/- was granted towards injuries sustained by the claimant. As it was a case of contributory negligence, thus, non-appellant – Corporation was given direction to share 50% of the liability, out of the total sum, calculated towards compensation. The learned Tribunal further directed that the amount already paid to the claimant as per provisions of Section 140 of the Motor Vehicles Act, 1998 (hereinafter referred to as ' the MV Act'), the same would be deducted from the final amount.

The learned counsel appearing for the appellants urged that the finding of the Tribunal holding that it is a case of contributory negligence, is wholly erroneous as the said finding was recorded in ignorance of the statements of independent witnesses AW 3 Bhanwar Lal and AW 5 Jaishanker. According to the learned counsel, both the witnesses have seen the occurrence of accident. Thus, being the eye witnesses, they have correctly stated as to how the accident took place. Referring to the statements of both the witnesses, it was submitted that the negligence of bus driver is proved, yet ignoring this aspect, the Tribunal recorded its finding, regarding contributory negligence of both the drivers. Learned counsel further urged that even

the award of compensation is also in ignorance of the material available on record. Arguing the case of Jetha Ram, it was urged that he had sustained a fracture on the right leg which was then found to be shortened by 2 – 1/2" , causing disability to the extent of 35.2%. However, ignoring this aspect, the Tribunal erroneously allowed a small sum of Rs.10,000/-. It was, thus, prayed that looking to the deficiency to the extent of 35.2%, claimant's award should have been allowed by granting compensation of a sum of Rs.3,27,000/-. So far as the case of Deepa Ram is concerned, it was urged that denial of compensation with regard to various bills produced towards expenses of repairing of jeep is illegal, hence in the case of Deepa Ram, it was prayed that a sum of Rs.31,089/- should have been allowed by the Tribunal.

On the other hand, learned counsel appearing for the non-appellants argued that the judgment of the Tribunal is based on sound principle of law. Supporting the finding recorded by the learned Tribunal, it was urged by the learned counsel for the non-appellants that it was a case of negligence of the jeep driver Deepa Ram that accident took place in the night around 11.30 P.M. Referring to the document (Ex.3) from the case of Jetha Ram, it was shown that Bus was found to be on its own side and

as accident took place from the driver side of both the vehicles and jeep even existing completely on the road and not to its own side itself, it becomes clear that the accident had not taken place due to rash and negligent driving of the bus driver. According to the learned counsel, if the bus would have been moving on a high speed, then in a case of head-on collision, the passenger and driver of smaller vehicle suffers severe damage, however, in the present matter, Jetha Ram has hardly sustained any injury and so far as Deepa Ram is concerned, he too had not sustained grievous injuries other than a fracture in the right leg. The further argument of the learned counsel is that statements of AW 3 Bhanwar Lal and AW 5 Jaishanker were rightly disbelieved by the Tribunal, because AW 3 Bhanwar Lal stated that at around 11.00 P.M. in night, he was sitting outside his Garrage, therefore, he had seen that a bus coming from Makpura and leaving towards Sanchore dashed jeep which was stopped on its own side of the road. Referring to the statement of the said witness, it was demonstrated that the said witness has not stated in his examination-in-chief that the accident took place due to rash and negligent driving of bus driver as what had been stated was only that the bus was moving on a high speed which dashed with the jeep standing on its own side. The argument of the learned counsel was that presence of said witness is doubtful as his statement was not recorded by the

Police during the course of investigation and the witness otherwise admitted in his cross-examination that he knows both the claimants Jetharam and Deeparam as they happen to visit him for repair of bus. Thus, it was submitted that witness Bhanwar Lal was interested witness. So far as AW 5 Jaishanker is concerned, the statement submitted by him was not to the effect that he has seen the accident other than stating the fact of accident while present in the Oil Mill existing on Sanchore road.

So far as the argument of the learned counsel for the appellants regarding amount of compensation is concerned, it was urged that the learned Tribunal allowed compensation to the extent which was found to be admissible based on evidence. According to the non-appellants, driver Deepa Ram was not entitled for higher claim as shortening of leg by 2 – 1/2" was due to the fact that both the bones were not properly adjusted while joining them after fracture. Therefore, it was due to the negligence of the Doctor the leg was shortened and for that negligence, no compensation can be awarded. Against non-appellants. Factum of deficiency to the extent of 35.2% has also been disputed on the ground that it is due to the mistake of the Doctor leg was shortened by 2-1/2", causing deficiency. Even the statement of Dr.Nahta and Certificate issued by him are doubtful as he was not his treating Doctor and deficiency

certificate was issued after several years of accident. Hence, according to the non-appellants, award of compensation by the Tribunal is just and proper, inasmuch as few repairing bills discarded in the case of Jetha Ram are proper because it was going in contradiction to the statement of witness Manchalal in the case of Jetha Ram. According to the learned counsel for the non-appellants, both the appeals preferred by the appellants deserve to be dismissed.

I have carefully gone through the record and find that in the statements of Jehta Ram and Deepa Ram claimants, it has been stated that accident took place due to rash and negligent driving of bus driver. Witness AW 3 Bhanwar Lal and AW 5 Jaishanker have supported claimants story, whereas in the statements of bus driver Dayalal and Noor Mohammed, it was stated to be a case of rash and negligent driving of the jeep driver. Thus, from the statements of both the sides, it has been projected to be a case of negligence of opposite side. In these circumstances, while taking note of the statements of witnesses, I have gone through the site map prepared by the Police immediately after the accident. The side map shows that bus is stanidng on its own side and its front left wheel exists on "Kuchcha" road, whereas jeep is existing on the middle of the road, thus perusal of site map focuses some light and shows that the accident had not taken entirely due to the negligence of

the bus driver, but seems to be more of the negligence of jeep driver. So far as the statement of AW 3 Bahnwar Lal is concerned, said witness has admitted that he knows both the claimants as both used to get their vehicles repaired in his Garrage, thus, an interested witness. According to the statement, it has come that accident took place in late night at around 11 – 11.30 P.M. when due to dark it is difficult to see as to how accident took place and further to specify that accident took place due to the rash and negligent driving of the bus driver. A person does not remain alert to see such occurrences with anticipation in his mind, otherwise occurrence cannot be seen by a witness, so minutely in the dark night at around 11.00 P.M. Therefore, testimony of the said witness is not believable, more so, when it is not corroborated by the site map. According to the witness, jeep was stopped on its own side, since bus was coming on a high speed. If this version of the witness is accepted, then site map prepared by the Police becomes a false document. However, not only said document has been produced, but no objection regarding its correctness has been raised by the claimants. Thus, in those circumstances, the statement of witness AW-3 Bhanwar Lal cannot be relied upon. So far as AW-5 Jaishanker is concerned, the perusal of the statement does not show that how the said witness had seen the accident, because merely existence of Oil Mill on the road side does not mean that

witness will always remain standing outside the oil Mill to see the occurrence. The said witness has not even stated that he was standing outside the Oil Mill at the time of accident. Therefore, it cannot be said that witness has seen the occurrence.

In view of the discussion made above, it can safely be held that accident took place more due to the negligence of the jeep driver, therefore, I find no infirmity in the finding recorded by the Tribunal, rather no perversity could be shown by the learned counsel for the appellant so as to call for interference in the finding of the learned tribunal, holding it to be a case of contributory negligence.

So far as the question of amount of compensation is concerned, first we take up the matter of Deepa Ram. Deepa Ram made a claim for a sum of Rs.3,27,000/-, showing it to be a case of physical deficiency of 35.2% due to injuries sustained by him arising out of the accident. Perusal of the material shows that even as per the statement of AW 4 Dr.Rajesh Nahta, claimant Deepa Ram sustained fracture in his right leg and bones were not rightly fixed as a consequence of which, it was shortened by 2 – 1/2". It is for this reason that, deficiency of 35.2% was certified. As the witness has stated that the bones were not rightly fixed after the fracture, it becomes a case of

negligence of the Doctor treating Deepa Ram and due to said negligence, non-appellants cannot be burdened with the compensation. It was, however, argued by the learned counsel for the appellant that even if it was a case of negligence of Doctor treating Deepa Ram, the ultimate cause of said treatment is being the accident, every wrong done subsequently by anyone has to be passed-on the non-appellant. I am not convinced with the argument that even if there was negligence of the Doctor in fixing the bone, responsibility of said negligence should be passed on the non-appellant, despite of fact that non-appellants have not treated injured Deepa Ram. If the argument is viewed from other angle, i.e., taking it to be a case where treating Doctor would have fixed the bone properly, case of deficiency due to shortening of leg would not have arisen and, in that case, the position of shouldering the burden would have come in picture. Thus, it becomes clear that the demand of compensation due to shortening of leg cannot be passed on the non-appellants. Therefore, I am not in agreement with the argument of the learned counsel for the appellants that the claimant Deepa Ram was entitled for compensation of a sum of Rs.3,27,000/-, more so, when the learned Tribunal recorded its finding to the effect that Deepa Ram was found moving without support of stick or otherwise, apart from finding him to be in a position to carry out all his duties and routine works. Therefore,

the compensation awarded by the Tribunal is found to be totally justified, because amount based on medical bills was then permitted and granted to the claimants.

So far as the case of Jetha Ram is concerned, a sum of Rs.7,825/- was allowed by the Tribunal. The said amount has been shown in Ex.15 issued by the witness Mancha Lal. Therefore, said bill was proved by the claimant by producing Mancha Lal. I have peruse the other bills, for my satisfaction, to find out as to why the same were not allowed. Perusal of Exhibits 17, 18 and 19 shows that no date has been mentioned on the bill, apart from the fact that it pertains to wiring etc. and further not showing us to when this work was undertaken and documents were not supported by producing the author. Exhibit 15 shows amount of all repairings pertaining to the damage of the jeep, though accident took place in November, 1991, whereas repair bill (Ex.15) was raised in April, 1992. Exhibit 16 is a bill of the various items, however, there exists no evidence as to where and when those items were fitted in the jeep and further as to whether those items were required for repair the jeep. Macha Lal, Mechanic, has not stated that during the course of repairing, number of items shown in other bills were fitted, thereby the claimants have failed to prove that number of items purchased were related to accident. Exhibit 20 is nothing, but a

quotation, yet shown as a bill and thereby, it proves that the claimants have tried to exaggerate the claim by one or the other means. In view of these circumstances, I do not find any substance in the argument of claimants, rather I feel that the learned Tribunal has rightly denied exaggerated claim of Jetharam while recording its finding. Thus, the finding recorded by the Tribunal is not found to be perverse, hence I am not inclined to interfere in those findings.

In the result of the discussions made above, I find no substance in any of the grounds raised by the learned counsel for the appellants, therefore, both the appeals preferred by the appellants are dismissed, with no order as to costs.

(MUNISHWAR NATH BHANDARI), J.

scd.